

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Justina S.,

Case No. 0:18-cv-02429-KMM

Plaintiff,

v.

**ORDER**

Andrew Saul, Commissioner of Social  
Security,

Defendant.

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Justina S. applied to receive disability benefits and supplemental security income from the Social Security Administration (“SSA”). Following a hearing before an Administrative Law Judge (“ALJ”), her disability claim was denied. The ALJ’s opinion became the final decision of the Commissioner of Social Security, and Ms. S brought this lawsuit seeking review of that decision. 42 U.S.C. § 405(g). The parties have filed cross-motions for summary judgment. Pl.’s Mot., ECF No. 13; Def.’s Mot., ECF No. 16. Ms. S argues that the Commissioner’s decision should be overturned because: (1) the ALJ that denied her claim is an “inferior officer” whose appointment did not comply with the Appointments Clause of the United States Constitution; and (2) even if the ALJ was properly appointed, the ALJ’s denial in this case was not based on substantial evidence. Pl.’s Mem., ECF No. 14. The Commissioner argues that: (1) Ms. S forfeited or waived any Appointments Clause challenge by failing to raise the claim during the administrative proceedings; and (2) the ALJ’s substantive decision in this case was properly decided. Def.’s Mem., ECF No. 17.

The Eighth Circuit has consolidated several appeals addressing the waiver issue raised by the Commissioner in this case. The consolidated cases include: *Davis v. Comm’r of Soc. Sec.*, 18-3422 (8th Cir. Nov. 14, 2018); *Thurman v. Comm’r Soc. Sec.*, 18-3451 (8th Cir. Nov. 19, 2018); *Iwan v. Comm’r of Soc. Sec.*, 18-3452 (8th Cir. Nov. 19, 2018); *Hilliard v. Comm’r of Soc. Sec.*, 19-1169 (8th Cir. Jan. 24, 2019). On

September 11, 2019, this Court issued an Order requiring the parties to discuss whether they believed it would be appropriate to stay this case pending the outcome of the consolidated appeals. Order (Sept. 11, 2019), ECF No. 20. Neither the Commissioner nor Justina S. object to the entry of a stay. Letter from E. Jenkins to Menendez, M.J. (Sept. 12, 2019), ECF No. 21; Letter from W. Kappelman to Menendez, M.J. (Sept. 16, 2019), ECF No. 22. Ms. S has requested limited supplemental briefing following resolution of the consolidated appeals.

No matter what the Eighth Circuit decides, waiting to issue any ruling in this case until after the decision in the consolidated appeals will simplify the issues in this case, conserve judicial resources, and will not severely prejudice the plaintiff. *Wilson v. Corning, Inc.*, No. CV 13-210 (DWF/TNL), 2018 WL 4635672, at \*1 (D. Minn. Sept. 27, 2018) (“In considering whether to stay proceedings, the Court considers whether a stay will (1) unduly prejudice or tactically disadvantage the non-moving party; (2) simplify the issues in the infringement litigation and streamline the trial; and (3) reduce the burden of litigation on the parties and the Court.”). Accordingly, the Court concludes that staying this case pending the outcome of the consolidated appeals is appropriate.

**IT IS HEREBY ORDERED THAT** this matter is **STAYED** pending the outcome of the consolidated appeals in *Davis v. Comm’r of Soc. Sec.*, 18-3422 (8th Cir. Nov. 14, 2018); *Thurman v. Comm’r Soc. Sec.*, 18-3451 (8th Cir. Nov. 19, 2018); *Iwan v. Comm’r of Soc. Sec.*, 18-3452 (8th Cir. Nov. 19, 2018); and *Hilliard v. Comm’r of Soc. Sec.*, 19-1169 (8th Cir. Jan. 24, 2019). The parties shall contact the Court within 14 days of the date of the Eighth Circuit’s decision in these cases to request lifting the stay or any other relief they believe is appropriate. The Court declines to rule on the plaintiff’s request for supplemental briefing at this time, but the request may be renewed at such time as the parties request that the stay be lifted.

Date: September 17, 2019

s/Katherine Menendez  
Katherine Menendez  
United States Magistrate Judge